

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Vara Birapaka,

Case No. 0:16-cv-04350-MJD-KMM

Plaintiff,

v.

**REPORT AND
RECOMMENDATION**

United States, John Doe, and John Doe,

Defendants.

Vara Birapaka, 3575 Lexington Ave. S., #315, Eagan, MN 55123, pro se plaintiff

This case was initially filed on December 27, 2016. ECF No. 1. On April 17, 2017, this Court entered an Order to Show Cause. ECF No. 3. As noted in the Order to Show Cause, if a defendant is not served within ninety days after the complaint is filed, the Court must dismiss the action without prejudice against that defendant. Fed. R. Civ. P. 4(m). But, if the plaintiff shows good cause for the failure of service, the Court must extend the period for service for an appropriate period. *Id.* Because the record reflected no proof that any defendant had been served within the ninety-day period after the complaint was filed, the Court gave the plaintiffs a May 1, 2017 deadline to demonstrate good cause. ECF No. 3 at 2.

Here, the plaintiff was notified of a deficiency in service by the Court's Order to Show Cause. The plaintiff responded on April 25, 2017, but the response did not provide an explanation for why service had not been accomplished. *See* Pl.'s Resp., ECF No. 5. And while the plaintiff indicated that service would be completed and an amended complaint would be filed by May 1, 2017, *id.* at 1-2, there is no indication at this point that service has been accomplished and no amended complaint has been filed.

Additionally, there has been no showing of excusable neglect to warrant a discretionary extension of the time for service. In the absence of good cause mandating an extension or excusable neglect justifying a discretionary extension, Rule

4(m) requires dismissal without prejudice. *See Kurka v. Iowa County, Iowa*, 628 F.3d 953, 957 (8th Cir. 2010) (explaining the distinction between mandatory and discretionary extensions under Rule 4(m)).

For the reasons stated, the Court recommends that this action be **DISMISSED WITHOUT PREJUDICE** pursuant to Rule 4(m).

Date: June 30, 2017

s/ Katherine Menendez
Katherine Menendez
United States Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. LR 72.2(b)(2). All objections and responses must comply with the word or line limits set for in LR 72.2(c).

Under Advisement Date: This Report and Recommendation will be considered under advisement 14 days from the date of its filing. If timely objections are filed, this Report and Recommendation will be considered under advisement from the earlier of: (1) 14 days after the objections are filed; or (2) from the date a timely response is filed.